

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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| <p>DAVID FARRELL,<br/><br/>Movant,<br/><br/>vs.<br/><br/>UNITED STATES OF AMERICA,<br/><br/>Respondent.</p> | <p>4:22-CV-04161-KES</p> <p>ORDER REQUIRING PETITIONER TO<br/>FILE A MOTION FOR LEAVE TO<br/>PROCEED IN FORMA PAUPERIS ON<br/>APPEAL OR PAY APPELLATE FILING<br/>FEE</p> |
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Movant, David Farrell, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Docket 1. This court entered judgment in favor of respondent and did not grant Farrell a certificate of appealability. Dockets 16, 17. Farrell has filed a notice of appeal, but he has not moved for leave to proceed in forma pauperis on appeal. See Docket 18. Farrell did not file a motion to proceed in forma pauperis during his § 2255 action.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). This court must sua sponte determine if Farrell can proceed in forma pauperis on appeal. To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

Farrell's appeal appears to be taken in good faith. But this court has no financial information by which it can assess whether Farrell can afford to pay the full filing fee, and Farrell did not file a motion to proceed in forma pauperis during his § 2255 action. *See* Federal Rule of Appellate Procedure 24(a)(3) ("A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless . . . the appeal is not taken in good faith[,] . . . the party is not otherwise entitled to proceed in forma pauperis[,] . . . [or] a statute provides otherwise."). Thus, Farrell must submit a motion for leave to proceed in forma pauperis, including a completed and certified prisoner trust account report so that this court can assess his ability to pay the full filing fee, or in the alternative, pay the full \$505 appellate filing fee, by **May 25, 2023**.

IT IS ORDERED:

1. That Farrell must submit a motion for leave to proceed in forma pauperis, including a completed and certified prisoner trust account report, or in the alternative, pay the full \$505 appellate filing fee, by

**May 25, 2023.**

Dated April 25, 2023.

BY THE COURT:

/s/ Karen E. Schreier  
KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE